HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

WRIT PETITION NOs.19736, 19737, 19738, 19739, 19767, 19803, 19807, 19808, 19809, 19819, 19823, 19909 AND 19916 OF 2006

-

W.P. No. 19736 OF 2006
Between:

P. Giridhar

..... Petitioner

AND

Andhra Pradesh Southern Power Distribution Company Limited, Tirupathi, rep. by Chairman & Managing Director & another

.....Respondents

W.P. No. 19737 OF 2006
Between:
V.K. Srinivas

..... Petitioner

AND

Andhra Pradesh Southern Power Distribution Company Limited, Tirupathi, rep. by Chairman & Managing Director & another

.....Respondents

W.P. No. 19738 OF 2006
Between:
Shaik Abdul Saleem

..... Petitioner

AND

Andhra Pradesh Southern Power Distribution
Company Limited, Tirupathi,
rep. by Chairman & Managing
Director & another

.....Respondents

W.P. No. 19739 OF 2006

Between:

P. Sridhar

..... Petitioner

AND

Andhra Pradesh Southern Power Distribution
Company Limited, Tirupathi,
rep. by Chairman & Managing
Director & another

.....Respondents

W.P. No. 19767 OF 2006

Between:

J. Mallikarjuna Rao

..... Petitioner

AND

Andhra Pradesh Southern Power Distribution
Company Limited, Tirupathi,
rep. by Chairman & Managing
Director & another

.....Respondents

W.P. No. 19803 OF 2006

Between:

Akula Madhu Sudhana Rao

..... Petitioner

AND

Andhra Pradesh Southern Power Distribution
Company Limited, Tirupathi,
rep. by Chairman & Managing
Director & another

.....Respondents

W.P. No. 19807 OF 2006

Between:
Mella Cheruvu Srinivasa Sastry

..... Petitioner

AND

Andhra Pradesh Southern Power Distribution
Company Limited, Thirupati
rep. by Chairman & Managing
Director & another

.....Respondents

W.P. No. 19808 OF 2006

Between:
Vuddagiri Srinivas

..... Petitioner

AND

Andhra Pradesh Southern Power Distribution
Company Limited, Tirupathi,
rep. by Chairman & Managing
Director & another

.....Respondents

W.P. No. 19809 OF 2006

Between:
Ch. Balasubramanyam

..... Petitioner

AND

Andhra Pradesh Southern Power Distribution

Company Limited, Thirupathi,
rep. by Chairman & Managing
Director & another

.....Respondents

W.P. No. 19819 OF 2006
Between:
Nakkala Lakshminarayana

..... Petitioner

AND

Andhra Pradesh Southern Power Distribution
Company Limited, Thirupathi,
rep. by Chairman & Managing
Director & another
.....Respondents

W.P. No. 19823 OF 2006
Between:

G. Anjaneya Prasad

..... Petitioner

AND

Andhra Pradesh Southern Power Distribution
Company Limited, Thirupathi,
rep. by Chairman & Managing
Director & another

.....Respondents

W.P. No. 19909 OF 2006
Between:

Sahik Nurul Ameen

..... Petitioner

AND

Andhra Pradesh Southern Power Distribution
Company Limited, Tirupathi,

rep. by Chairman & Managing
Director & another

.....Respondents

W.P. No. 19916 OF 2006
Between:

B. Venkata Ramana Kumar

..... Petitioner

AND

Andhra Pradesh Southern Power Distribution
Company Limited, Tirupathi,
rep. by Chairman & Managing
Director & another

.....Respondents

:: COMMON ORDER ::

Counsel for the petitioners : Shri A. Rajasekhar Reddy

Counsel for the respondents : Shri G. Vidya Sagar

Dated: 14.11.2006

In these petitions, the petitioners have prayed for quashing communications dated 22.08.2006, whereby Superintending Engineer, Operation Circle, Andhra Pradesh Southern Power Distribution Company Limited (hereinafter described as 'APSPDCL') (respondent No.2) rejected their candidature for appointment on the posts advertised vide notification dated 14.05.2001 on the ground that agreement numbers and M-books were not mentioned in service certificates.

For the sake of convenience, reference is being made to the pleadings of Writ Petition No.19809 of 2006 in which counter-affidavit has been filed on behalf of the respondents.

Petitioner – Shri Ch. Balasubramanyam is said to have worked with M/s Naresh Electrical Works and Contractors who was engaged by the erstwhile Andhra Pradesh State Electricity Board (for short 'the Board') for execution of works in rural and town sections, Narasaraopet division. The service certificate (dated Nil) issued by Shri Daveed of M/s Naresh Electrical Works, which has been countersigned by Additional Assistant Engineer (Operation), A.P. TRANSCO, Nekarikallu, shows that the petitioner had worked from February 1996 to April 2000 with the contractor and during this period, he attended the work relating to electrification of colonies, L.I. Schemes, road widening and RW Scheme works in Narasaraopet division. In pursuance of notification dated 14.05.2001 issued by Chief Engineer (Project), APSPDCL, Tirupati, the petitioner applied for recruitment as LDC/Typist. He was interviewed by the Selection Committee on

22.08.2003, but the result of the selection was not announced. After a gap of three years, he was informed by respondent No.2 vide his letter dated 22.08.2006 that his candidature has not been considered because the service certificate produced by him does not contain the details of agreement numbers and M-books.

The petitioner has questioned the rejection of his candidature by contending that the reason assigned by respondent No.2 for doing so is legally untenable. In the affidavit filed by him, the petitioner has averred that the advertisement issued by the Board did not contain a condition that the certificate produced by the employees of the erstwhile contractor must contain the details of the agreements and M-books. He has further averred that in the absence of any such enumeration in the notification, the certificate produced by him, which was duly attested by Additional Assistant Engineer (Operation), AP TRANSCO, could not have been ignored by respondent No.2 while considering his candidature for regular appointment.

The case set up by the respondents is evinced from the affidavit of Shri V. Rajasekhar, Superintending Engineer, APSPDCL (Operation Circle) , Guntur, the relevant portions of which are extracted below:

> " It is submitted that before adverting to various averments made in the writ petition, it is respectfully submitted that APSPDCL is a company registered under the Companies Act formed after un-bundle of A.P.S.E.B. into different companies in terms of A.P. Electricity Regulation Act 30 of 1999. The then APSEB has issued guidelines in BP.Ms.No.36, dated

18.05.1997 for filling up of 50% of the existing vacancies in the initial recruitment cadre viz., Junior Linemen/Junior Plant Attendant/Junior Assistants/Lower Division Clerks/Revenue Cashier/Typists/Sub-Engineers by ex-casual labour who obtained Court orders, Village Electricity Workers and contract workers. Further instructions were issued vide BP.Ms.No.271, Dt.31.12.1997 in respect of contract labour who worked as on 18.05.1997 are only eligible for consideration. A batch of writ petitions were filed before this Hon'ble Court alleging that although they fulfill the conditions, they have not been called for interview or that their candidature was not considered. This Hon'ble Court by an order Dt.18.11.1999 in W.P.No.5064 of 1999 and batch disposed of the writ petitions directing the procedure to be adopted for consideration of the candidature inters of B.P.Ms.No.36 and 37 Dt.18.05.1997. In obedience to the directions of this Hon'ble Court, AP TRANSCO which is a successor company to APSEB issued T.O.O.Rt.No.137, Dt.07.07.2000 for filling up of the vacancies which are available as on 18.05.1997 in terms of B.P.Ms.No.36 Dt.18.05.1997. In terms of the directions issued from time to time, the Operation Circle, Guntur of APSPDCL issued a notification Dt.14.05.2001 published in "Eenadu" Telugu Daily Newspaper inviting applications from the candidates who fulfill the conditions in B.P.Ms.No.36, Dt.18.05.1997 and subsequent instructions issued. The writ petitioners herein has applied for the post of LDC and he was called for interview scheduled to be held on 29.08.2003. At the time of interview, he has only produced service certificate issued by M/s Naresh Electrical Works and Contractors, Chilakaluripet, Guntur district stating that the writ petitioner worked as contract labour at rural sections and town sections

at Narasaraopet division from February 1996 to April 2000. The said certificate was countersigned by Additional Assistant Engineer, Operation, Nakarikallu. In the application form submitted in terms of the notification he did not give any details of date of first engagement, period he worked and the place of work and nature of work. Along with the application, he has enclosed another letter stating that he has the experience as Accountant at Tulluri Group of Companies since 1996. Basing on the documents submitted by him verification was done and it was found that no details were furnished. Accordingly, petitioner was issued with letter Dt.22.08.2006 rejecting his candidature for appointment as LDC/Typist. The proceedings Dt.22.08.2006 are perfectly legal and petitioner cannot have any grievance in that regard. The writ petition itself is misconceived and liable to be dismissed.

It is submitted that since no documents were produced to consider his candidature for recruitment in terms of B.P.Ms.No.36, Dt. 18.05.1997 the matter was referred to the concerned Operation Circle for verification of the genuineness of the candidate and also to the Vigilance Department. Subsequently, the writ petitioner vide letter dated Nil received on 28.12.2004 furnished copies of the Chit Agreement where the writ petitioner alleged to have worked under the contractor Sri T. Davidu. The value of the work chit No.199/95-96 is for Rs.1,717/- and executed during the period from October 1996 to November 1996. Another agreement No.17/95-96 is for a sum of Rs.2,471/- for execution of the works relating to lift irrigation scheme at Dintenapadu, Ganaparam Section during June 1997 to July 1997. The Chit Agreement No.19 was executed during the period June 1997 to July 1997. Thus, the petitioner was not working as on 18.05.1997 as required in terms of

B.P.Ms.No.271, Dt.31.12.1997.

In reply to averments made in Para 3 and 4 it is submitted that during the Vigilance Enquiry, it was found that the petitioner produced the certificate from one Mr. T. Davidu of M/s Naresh Electrical Works, Chilakaluripet that the petitioner worked from February, 1996 to April, 2000. The service certificate was signed by one Polisetti Venkata Kotaiah who retired from service on 30.06.2000. The said Additional Assistant Engineer worked at Nakarikallu Section from 01.07.1997 to 30.06.2000, whereas the petitioner along with writ petition furnished a statement of worked alleged to have been attended by him. As per the said statement he worked at Nakarikallu Section in December, 1998 under K-2 Agreement No.54/98-99, 51/98-99. The petitioner does not fulfill the conditions prescribed under B.P.Ms.No.36, Dt.18.05.1997 to consider his candidature since his application or service certificate did not contain agreement numbers and M-Books and the same was reflected in rejecting his candidature vide proceedings Dt.22.08.2006, for which the petitioner cannot have any grievance. The counter signature by Additional Assistant Engineer, is not of any help, inasmuch as it was for a subsequent period. The allegation that second respondent prepared a list of candidates after verifying the records basing on the report of the Vigilance report, is only with regard to the documents furnished by the petitioner and that itself does establish the facts of the writ petition to be considered. In terms of B.P.Ms.No.36, Dt.18.05.1997 one should fulfill the conditions prescribed and the subsequent instructions for consideration of his candidature in the initial recruitment posts. Since the petitioner did not fulfill the conditions as he is not a contract labour falling within the definition under B.P.Ms.No.36, Dt.18.05.1997 read with

B.P.Ms.No.271 Dt. 31.12.1997 and as the petitioner failed to establish that he has been working as a contract labour as on 18.05.1997 and he cannot claim any right to be considered for the post. Further it is to submit that the AP TRANSCO has issued clarification vide Memo. No. Addl. Secy/DG (IR)/AS (IR)/PO.II/A1/1170/99, Dt.03.12.1999. As per the said memo, it was clarified that whenever the service certificate produced by the candidate does not disclose agreement numbers and date of check-measurement, said service certificate has to be rejected. The service certificate produced by the petitioner at the time of interview does not disclose the details of agreement, check-measurement. Therefore, the service certificate is rejected and the same was intimated to the petitioner vide Lr.No.SE/O/GNT/Adm./C3/D.No.1188/06, Dt.22.08.2006.

The averments made in para-5 are equally misconceived. Although, notification Dt.14.05.2001 was issued prescribing the candidates to make an application wherein it was specifically stated that the Village Electricity Workers, Contract Labour and Ex-Casual Labour who are working as on 18.05.1997 along will be considered. The petitioner in his application did not give any details of the date of first engagement, the period he worked or nature of work. Therefore, he cannot complaint that no details were sought for. The candidates who fulfill the conditions prescribed in B.P.Ms.No.36, Dt.18.05.1997 were appointed but petitioner cannot compare himself with those persons.

In reply to averments made in para-6, it is submitted that the petitioner having failed to furnish the details at the time of interview has approached this Hon'ble Court with untenable grounds. Even as per the material papers filed along with the writ

> petition, the petitioner does not have any right to be considered in terms of B.P.Ms.No.36, Dt. 18.05.1997. The Chit Agreement No.199/95-96, 17/95-96 and 19/97-98 do not disclose that the petitioner was working as on 18.05.1997 to consider his candidature. The K-2 Agreements are subsequent to 1997, therefore they have no relevancy. Further, the then proforma filed at Page-11 and 12 of the material papers were not produced during the enquiry. The Additional Assistant Engineer, Operations, AP TRANSCO, Nakarikallu cannot certify with reference to other areas. Thus, the documents are not genuine to consider the candidature of the writ petitioner and there are no merits in the writ petition."

I have heard learned counsel for the parties and perused the record. In some of the petitions, the petitioners have produced undated certificates together with statements showing the particulars of agreements pursuant to which the contractors had executed different works awarded by the Board and the period during which the particular individual had worked. In some other cases, the certificates bear the date and the same are accompanied by the statement showing the particulars of agreements pursuant to which the contractor had executed the work awarded by the Board as also the period during which the particular individual had actually worked with the contractor.

Shri A. Rajasekhar Reddy, learned counsel for the petitioners argued that rejection of the candidature of the petitioners only on the ground of non-furnishing of the details of the agreements and M-books in the service certificates should be declared illegal and violative of the petitioners' fundamental right to

equality guaranteed under Articles 14 and 16 of the Constitution because the notification issued by the Board did not contain any indication that the certificate to be produced by the employee should contain the details of the agreements and M-books. Learned counsel further argued that arbitrariness of the decision taken by respondent No.2 is evinced from the fact that result of the selection was not announced for a period of three years and during this interregnum, no opportunity was given to the petitioners to produce the details of agreement and M-books. Shri Reddy submitted that even though the certificates produced by the petitioners did not contain agreement numbers and M-Books, the statements produced by them contained all the particulars so as to enable the concerned authority to cross-check and verify the facts.

Shri G. Vidyasagar, learned counsel for the respondents invited my attention to memo No. Addl. Secy/DGM(IR)/AS(IR)/FO.II/A1/1170/99 dated 03.12.1999 issued by Additional Secretary, AP TRANSCO to show that for being treated eligible, the candidate was required to produce certificate issued by the contractor duly signed by AP TRANSCO official with reference to the agreement under which the particular contract labour was engaged prior to 18.05.1997 and confirming the check measurement after 18.05.1997. According to Shri Vidyasagar, this memo envisaged that certificate to be produced by the candidate must contain the details of the agreement entered into between the contractor and the management of the Board and the particulars of the work with reference to which the employee had worked.

Learned counsel argued that respondent No.2 did not commit any illegality by refusing to entertain the candidature of the petitioners because the certificates produced by them were incomplete. He then submitted that the delay in finalization of the result cannot be a ground for nullifying the decision of respondent No.2 not to entertain the candidature of the petitioners.

In my opinion, the rejection of the petitioners' candidature is legally unsustainable and the impugned communications are liable to be nullified. A perusal of notification dated 14.05.2001 issued by Chief Engineer (Projects) APSPDCL, Tirupati shows that the candidates, who had worked under the contractors, were required to apply in the prospect proforma. The proforma was also printed in the notification issued by the Chief Engineer. A bare reading thereof shows that the candidates were required to submit the attested certificates in support of their educational qualifications (technical/non-technical), date of birth, service certificate (signed by candidates working and by the concerned Engineer) and caste certificate. The proforma did not contain any indication of the nature of certificate to be issued by the contractor, which, as mentioned above, was required to be signed by the concerned Engineer. That apart, there is nothing in the language of the proforma from which it can be inferred that the candidates were required to produce certificate containing the details of the agreements or M-books evidencing the execution of work by the candidate during the particular period. Therefore, the solitary reasons assigned by respondent No.2 for rejecting the candidature of the petitioners is liable to be declared as irrelevant

and extraneous.

I also agree with Shri Rajashekar Reddy that without giving opportunity to the petitioners to produce evidence i.e. agreement numbers and the particulars of M-books, respondent No.2 could not have outrightly rejected the candidature of his clients after a long gap of three years between the date of interview and the date of rejection and that too by ignoring the fact that each of the petitioners furnished statement containing the details of the agreement and the period during which he had worked under the contractor. In my considered view, respondent No.2 should have, before rejecting the candidature of the petitioners on the ground of the absence of the details of agreement numbers and M-books, given an opportunity to them to produce the relevant details. An adverse inference could have been drawn against the candidates only if they failed to produce the required particulars even after being given opportunity to do so.

As a sequel to the above, I hold that the rejection of the candidature of the petitioners is illegal, arbitrary and violative of the petitioners' fundamental right to equality in the matter of employment guaranteed under Article 16 of the Constitution.

In the result, the writ petitions are allowed. Communications dated 22.08.2006 issued by respondent No.2 rejecting the candidature of the petitioners for the posts specified therein are quashed. The officer concerned is directed to reconsider the candidature of the petitioners and pass appropriate order in accordance with the relevant rules and instructions within a period of two months. The petitioners are given liberty to submit

representations before respondent No.2 within a period of three weeks from today giving the agreement numbers and M-books evidencing their performance as contract labours during the particular period. The officer concerned must examine each case on its merits and then take decision on the eligibility and entitlement or otherwise of the petitioners to be appointed against the advertised posts and pass reasoned orders.

While disposing of the writ petitions in the manner indicated above, I make it clear that the petitioners shall be free to file applications under Right to Information Act, 2005 and seek particulars of Measurement Books from the concerned authority of the Corporation.

As a sequel to disposal of the writ petitions, W.P.M.P.Nos.24917, 24918, 24919, 24920, 24950, 24985, 24989, 24990, 24991, 25001, 25006, 25130 and 25137 of 2006 filed by the petitioners for interim relief are disposed of as infructuous.

G.S.SINGHVI, CJ

14.11.2006
ksld